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WITH this number we close our fourth volume. A glance at the accompanying volume-index will show that we have traversed a pretty wide field during the past twelve months. The index was prepared by H. A. Minor, Jr., of the Lynchburg bar.

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WE have received from several subscribers copies of circular letters sent out by practitioners in this State, soliciting business. Some of these circulars extol the skill and integrity of their authors, with all the bombast and unblushing effrontery of the modern patent medicine poster. Others modestly refrain from self-boasting, but indicate that the candidate for business noses through the records of the bankrupt courts, and solicits the honor of representing those whom he finds in the list of creditors.

We had heard of such things in other States, but that such methods prevail in staid old Virginia, where professional honor and the observance of professional ethics have generally gone hand in hand, suggests a professional decadence which we had not suspected.

We may refer to this subject again, and give more publicity to these circulars than their authors could hope for by the ordinary use of the mails. In the meanwhile, we shall be glad to add to our collection, and our readers are requested to furnish us with copies of any literature of this kind that may fall into their hands.

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IT is not a rare circumstance for judges to assume legislative functions, but we doubt if any of our readers ever stumbled upon so frank an admission of the usurpation as is made by Dent, J., in *Brown* v. *Randolph County Court* (W. Va.), 32 S. E. 165, in concurring in the opinion read by Brannon, P. "To hold otherwise," says he, "is to deny to the taxpayers the undoubted right to inquire into and know whether their court-house has been relocated in the manner provided by law. And for this reason, though reluctant to usurp legis-

lative functions, I concur in the proposed judicial amendment of the statute to prevent a denial of the just rights of those in interest. Judge-made law, in such an unforeseen event, is better than no law. It is at least in accord with, and preservative of, that favorite maxim of the courts of common law, founded on fiction though it be, that 'there is no right without a remedy.'" Whether this is to be attributed to his honor's native frankness or to his non-judicial temperament may be a question, when reference is had to an opinion of the same judge in the case of *Atkinson* v. *Plumb*, 32 S. E. 229, found in the same *National Reporter* pamphlet.

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THE election of Prof. Charles A. Graves, of the Law Department of Washington and Lee University, to the chair of Law in University of Virginia, made vacant by the death of the lamented Prof. Walter D. Dabney, has been received with great satisfaction by the friends of the latter institution. Prof. Graves needs no introduction to our readers. He was one of the founders of this journal, and has been a regular and valued contributor since severing his official connection with it. He is an accurate and enthusiastic lawyer, and will bring to the chair which he is now to adorn, an experience of twenty years as a successful teacher of law.

We congratulate the University on this acquisition to its teaching force, and predict for Prof. Graves a career of still greater usefulness as a teacher, and increased reputation from the circumstance of having a larger audience and a wider field.

The editor of this journal, who is himself connected with the Law Department of the University of Virginia, views with peculiar satisfaction the closer association with his learned friend which is thus promised, and takes this opportunity to publicly commend the action of the Visitors in tendering the chair to one so worthy to fill it.

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THE ruling of the Virginia Court of Appeals in *Hoge* v. *Turner*, 32 S. E. 291, construing the "Trading as Agent" statute, is an important one. The court overrules the unreported decision in *Trevilian* v. *Powell*, in which it was held that knowledge of the real situation by the creditor precludes him from the benefit of the statute. The court now holds, and very properly as it would seem, that unless the provisions of the statute with respect to the business-sign and the advertisement in a newspaper, are complied with, all the property, stock and choses in action, acquired or used in the business, become abso-

lutely liable for the debts of the alleged agent, whether the creditor have notice of the facts which the advertisement would disclose or not.

The decision also affirms the familiar but important doctrine of *Yates* v. *Law*, 86 Va. 117, that in a contest between a wife and the creditors of her husband, the presumption of law is that the husband is the owner of all the property acquired or possessed by the wife during the coverture, and the burden is on her to establish otherwise. It may seem a hard case upon the wife to compel her to assume the burden of proof in such case, and yet exclude her as a witness. But, while injustice may occasionally result from the principle, we doubt if this actually occurs once in a hundred cases. If the wife in fact has honestly acquired the property, not through the husband or in fraud of his creditors, the fact can generally be established by abundant testimony. Courts are but imperfect instruments of justice at best, and many of the soundest principles of law occasionally work injustice. Our own practical experience has convinced us of the wisdom of the doctrine in question, and we should be sorry to see it abandoned or qualified.

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In a previous number we called attention to the Act of February 12, 1898 (Acts 1897–8, p. 363)—which appears to have been intended to authorize the garnishment of municipal corporations—with the comment that the act would scarcely accomplish its apparent purpose. Our attention has since been called to a later act, found on page 445 of the same sessions-acts, specifically providing that "the wages and salaries of all officials, clerks and employes of any city, town or county shall be subject to garnishment or execution upon any judgment rendered against them," but not to affect the exemption under chapter 178 of the Code.

It will be observed that the act does not render a municipal corporation subject to garnishment as to all debts due by it, but only as to wages and salaries of "officials, clerks and employes."

In determining whether, in a particular case, the principal debtor is included within the class named, reference must be had to the act first above mentioned. That act provides that "all officers, clerks and employes who hold their office by virtue of city, town or county authority, whether by election or appointment, and who receive compensation for their services from the moneys of such city, town or county, shall for the purpose of garnishment be deemed to be, and are, employes of such city, town or county."

The propriety of this legislation is questionable. A long established public policy of the common law is apt to be deeply rooted in wisdom, and should not be altered unadvisedly or lightly. This legislation overturns two important principles of public policy, which have received the sanction of the wisest jurists. One is that a municipal corporation should not be converted into a private agency for the collection of debts, or be forced into litigation in which it has no interest, with the result of consuming the time of its fiscal officers, incurring expense of counsel fees, the tying up of funds in its hands, and the complication of its accounts. See *Leake* v. *Lacy* (Ga.), 51 Am. St. Rep. 112, and the very valuable note appended. The other is, that it is against public interest that the salaries of public officials should be diverted to creditors. In contemplation of law, the official whom the public has designated for the performance of its service can best perform that service. If his salary may be intercepted by creditors, as each installment accrues, he cannot remain in office, and by his enforced resignation the public loses the benefit of his services and must be content with a less desirable, if more frugal, substitute.

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We publish elsewhere a communication from Frank T. Glasgow, Esq., of the Lexington bar, suggesting further legislation as to the competency of witnesses. While we have profound respect for our friend's judgment, we cannot assent to the wisdom of the proposed change. The alteration suggested is in the ruling of the court in *Mutual Life Ins. Co.* v. *Oliver*, 95 Va. 445, where the statute was construed as excluding the evidence of one party to the transaction, where it is had with an agent of the other, and such agent is dead; yet where the circumstances are reversed, the party being dead and the agent alive, the agent is not incompetent.

The evident purpose of the statute is to remove interest as a disqualification, so far as it may be done without danger of unfairness to the adversary. The common law was extremely cautious in the matter of competency of witnesses, yet with all its stringency in this particular, the mere relation of principal and agent never rendered the latter incompetent. He was regarded, even under that rigid system, as capable of giving impartial testimony. The policy of the statute is to enlarge rather than restrict the common law doctrine of competency. To declare an agent incompetent in such case would be to carry the policy of excluding possibly perjured testimony a bowshot beyond the rigid rules of the common law. If the testimony of

one who has no interest in the subject-matter of the suit is to be excluded merely because he was at the time of the transaction agent for one of the parties, the same principle of exclusion might with equal reason be extended to a stranger who accidentally happened to be present at the time of the transaction under investigation. If an agent's testimony is to be excluded because his competency gives an advantage to that party for whom he proposes to testify—an advantage due to the fact that the other party's testimony is lost by his death—so the evidence of a stranger, accidentally present, ought to be excluded for the same reason. Certainly, in the latter case, where the stranger was the sole witness to the transaction, besides the parties themselves, the living party in whose favor the stranger testifies has great advantage over the estate of the deceased party. Yet, we imagine, this would scarcely be regarded a sound reason for excluding the stranger's testimony. The agent, who has no personal interest in the transaction, is in legal contemplation himself a stranger to it. True, he is apt to lean toward his principal; but the same may be said of a relative or a close friend—yet relationship or friendship, while they may affect credibility, do not affect competency.